

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5722 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VALODARA GOVINDBHAI KHODABHAI

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

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Appearance:

None present for Petitioners

MR YH VYAS for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/02/98

ORAL JUDGMENT

#. The learned counsel for the respondent states that on behalf of the respondent, reply to the Special Civil Application has been filed but the same is not available on record of this Special Civil Application. However, he submitted a carbon copy of the reply which is taken on record. Perused the Special Civil Application and heard the learned counsel for the respondent.

#. The petitioners have approached this Court by way of this petition under Article 226 of the Constitution challenging the inaction on the part of the respondent in not regularising their services and denying them consequential benefits of pay allowances, holidays, promotions, permanency in job etc.

#. The petitioners have come up with the case that they are serving as Sweepers with the respondent-Corporation since the dates as mentioned in para-2 of the Special Civil Application and though they are working for the last many years, the respondent-Corporation is continuing them as daily wagers which results in denial of manifold service benefits to them. Prayer has been made in the Special Civil Application for direction to the respondent to regularise their service from the dates on which they joined the services of the Corporation and further for directions to the respondent to pay all the consequential benefits including backwages, seniority and appropriate adjustments in the grade. By way of interim relief, the petitioners prayed for (i) restraining the respondents from terminating their services and (ii) requiring the respondent to pay to the petitioners pay equivalent to the pay paid to other regular/ confirmed Sweepers of the respondent-Corporation.

#. On 24th October 1986, this Special Civil Application has come up for admission before this court, on which date this Court ordered:

"Rule. Ad-int. injunction restraining the respondents from terminating services of the petitioners except in accordance with law. S.O. to 24.11.86."

#. So this Court has restrained the respondent from terminating the services of the petitioners, except in accordance with law. This interim relief was made absolute by this Court on 4.4.88. The learned counsel for the respondent does not dispute that the petitioners are continuously working in the Corporation. The first contention made by learned counsel for the respondent is that in the Corporation there is no regular post for the petitioners and as such, their services cannot be regularised. It has next been contended that the petitioners were given appointments on part time basis and as such, they cannot be made permanent. Lastly, grievance has been made that the petitioners were appointed only on daily wages and as such they have no right whatsoever of claiming benefits prayed for in this Special Civil Application.

#. So the learned counsel for the respondent does not dispute the fact that the petitioners are continuously working in the Corporation from the dates as mentioned in para-2 of the Special Civil Application. If we go by these dates, the petitioner No.1 is in service of the Corporation since 1978, petitioner No.2 since 1979, petitioners No.3 and 4 since 1982 and petitioner No.5 since 1983. Thus, even the last petitioner is in continuous service of the respondent-Corporation for about 14 years. Though this Court has given liberty to the respondent to terminate the services of the petitioners in accordance with law, their services were not terminated, which goes to show that the respondent-Corporation is in need of the petitioners. When the petitioners are working for all these years it is too difficult to accept that the Corporation has no work for them. Continuing these persons on daily wages or keeping them as daily wagers for all the years will adversely affect the service conditions and other benefits to be paid to them on their retirement. After reasonable time, even daily wagers or part time employees are to be considered for regular employment subject to fulfilment of eligibility as provided for a particular post, and as such the Corporation cannot take defence that it will not make them permanent or will keep them only as part timers or daily wagers for all the years i.e. even up to the age of attaining superannuation.

#. Taking into consideration the totality of the facts of this case, interest of justice will be met in case this Special Civil Application is disposed of in terms that the respondent-Corporation shall consider the case of petitioners for their regularisation of services and in case they are regularised in service, the respondent-Corporation shall further consider what consequential benefits should be given to them in accordance with law. In case the claim of the petitioners for regularisation and consequential benefits is not acceptable, a reasoned order may be passed and a copy of the same may be sent to the petitioners by registered post A.D. In case of difficulty, liberty is granted to the petitioners for revival of this Special Civil Application.

#. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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(sunil)